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Attorney for Plaintiff G. A. W.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

G. A. W.,	)	
	)	No. _____
Plaintiff,	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	<b>COMPLAINT</b>
Defendant.	)	
_____	)	

Comes now Plaintiff G.A.W., through counsel, and for her cause of action against the Defendant, United States of America, states as follows:

**JURISDICTION**

1. At all times relevant hereto, Plaintiff G.A.W. was a resident of the State of Alaska and a civilian dependent spouse of an active duty member of the United States Army, stationed at Joint Base Elmendorf Richardson.

2. This cause of action arises under the Federal Tort Claims Act, 28 U.S.C. sec. 1346, 2401, and 2671 et. seq.

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3. On May 10, 2012, the claim set forth herein was presented in writing to the Department of the Air Force Legal Services Agency ("AFLSA/JACC").

4. On May 13, 2013, the claim was denied by AFLSA/JACC.

5. On July 18, 2013, Plaintiff timely requested reconsideration of her claim.

6. On August 23, 2013, the claim after reconsideration was again denied by AFLSA/JACC.

7. Based on paragraphs 1 through 6 above, this court has jurisdiction over the claim asserted herein.

#### **FACTS AND CAUSES OF ACTION IN NEGLIGENCE**

8. On or about September 20, 2010, Plaintiff was admitted to Elmendorf Air Force Hospital for a Colonoscopy and Esophagogastroduodenoscopy (EGD). Plaintiff was administered Versed before prior to the EGD and the procedure, performed by Dr. Cook and his staff, was completed without any problems. However, as Dr. Cook began the colonoscopy, the Plaintiff began to experience pain, as the Versed had worn off, and Dr. Cook stopped the procedure to request an anesthesiologist.

9. Certified nurse anesthetist Capt. B. J. Holmes, U.S.A.F., was assigned to administer Plaintiff's anesthesia. Capt. Holmes discussed with Plaintiff the options for receiving the anesthesia and Plaintiff chose to have it administered intravenously.

10. After the surgery was completed Captain Holmes sexually molested Plaintiff while she was coming out from under the effects of the anesthesia. Plaintiff

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was conscious enough to realize what was happening to her but unable to physically resist.

11. Plaintiff immediately reported what happened to other medical personnel present and in attendance of her at the hospital.

12. Investigation of Plaintiff's complaint revealed that Captain Holmes had sexually molested other female patients under his care in the recent past prior to molesting Plaintiff and those prior molestations had been reported to Captain Holmes' superiors.

13. No action was taken by Defendant as a result of the prior complaints against Captain Holmes to remove him from duty and/or prevent his continued access to hospital patients in the same or similar situation as Plaintiff on the subject occasion.

14. Plaintiff was not advised before she consented to being treated by Capt. Holmes of the reports of prior complaints of sexual molestation by him of patients.

15. Plaintiff suffered severe emotional and psychological injury as a result of this event which resulted in damages including past and ongoing medical care and expenses, loss of income and severe mental and emotional suffering and disability.

16. Defendant's agents/employees, including but not limited to Colonels Freidrichs, Affleck and Wolfe, who on the subject date were the commanders in charge of the subject JBER Hospital operations were all acting within the scope of their employment/agency and were charged with the duty to protect patients, including Plaintiff, under the care of the hospital from undue risk of harm. Included in that duty was the

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duty and obligation to implement and enforce policies and procedures and to train and supervise other personnel in proper procedures to be able to timely detect, prevent and report any conduct by others present in the hospital setting, whether employees or non-employees, from engaging in conduct likely to cause harm to patients.

17. Defendant had the duty upon initially being notified of the risk of harm to patients posed by Captain Holmes to take appropriate actions to prevent him from having the ability to continue posing said risk of harm.

18. Defendant had a duty to obtain the informed consent of Plaintiff before the surgery.

19. Defendant breached its above described duties by failing to implement and to adequately enforce appropriate and effective policies and procedures and/or to adequately train and supervise other personnel to detect, prevent and report the above described misconduct taken toward patients and by failing to take appropriate and necessary actions to prevent continued risk of harm once the misconduct was initially reported by patients other prior to the injury to Plaintiff, and by failing to advise Plaintiff before she consented to submit to Capt. Holmes care of the prior complaints of misconduct made against him.

20. Defendant's breach of duties as described herein were the result of negligence and said negligent acts and omissions were the proximate cause of Plaintiff's complained of injuries.

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## PRAYER

WHEREFORE, Plaintiff prays for relief as set forth below:

1. Entry of judgment against Defendant awarding Plaintiff compensation for the damages resulting from her injuries in the amount of \$ 5,000,000.00;
2. All costs of litigation and reasonable fees and expenses of plaintiff's attorneys and other expenses to the maximum amount allowed by law; and
3. All such relief as is just in the premises.

DATED this 18 day of November, 2013.

Law Office of Kenneth A. Norsworthy, LLC

By   
Kenneth A. Norsworthy  
Alaska Bar No. 7705055